

Waste Management of Santa Clara Co. Inc., d/b/a Recycle America and Sanitary Truck Drivers & Helpers Local 350, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 32-RC-3344

March 8, 1993

DECISION ON REVIEW, DIRECTION, AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Acting Regional Director's Supplemental Decision and Order. The request for review is granted as it raises a substantial issue with respect to the Acting Regional Director's conclusion that, because the Employer was found to have violated Section 8(a)(1) of the Act during the critical preelection period, the election should, per se, be declared a nullity. Pertinent portions of the Acting Regional Director's Supplemental Decision and Order are attached.

We find that although the unfair labor practice proceeding¹ established that the Employer's conduct violated Section 8(a)(1) in several respects, it did not establish that the conduct was sufficient to affect the results of the election. Thus, in the unfair labor practice case, although it was found that the Employer's parent corporation's human relations manager interrogated and solicited grievances from an employee, and requested the employee to campaign against the Union, there was some testimony that the employee was a known union supporter, only one employee was involved, and the bargaining unit consisted of approximately 45 employees. There was no evidence of dissemination of the Employer's remarks among other members of the unit, and the last incident occurred approximately 1 month prior to the election. In these circumstances, we find the conduct insufficient by itself to have affected the results of the election. See, e.g., *Coca-Cola Bottling Co.*, 232 NLRB 717 (1977); *Allied-Signal*, 296 NLRB 211 (1989). We therefore conclude that the ballots should be opened and counted.²

¹ See *Recycle America*, 308 NLRB 50 (1992).

² That is not to say the Acting Regional Director may not have had discretion, in some circumstances, to have declared the election a nullity at an earlier stage, prior to the litigation in the unfair labor practice case. See, e.g., *Suprenant Mfg. Co. v. Alpert*, 318 F.2d 396 (1st Cir. 1963). Here, however, the representation proceeding lay dormant throughout the litigation of the allegedly objectionable con-

This, however, does not preclude either party from filing objections to the election at the appropriate time.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 32 shall, within 10 days from the date of this decision, open and count the ballots, and shall thereafter prepare and cause to be served on the parties a tally of ballots, on which basis he shall issue the appropriate certification.

ORDER

It is ordered that the matter is referred to the Regional Director for Region 32 for further processing.

duct in the unfair labor practice case. Moreover, in his ruling, declaring the election a nullity, the Acting Regional Director relied on the actual findings made by the Board. In these circumstances, it seems most appropriate to consider only the unfair labor practices found, and not those earlier alleged and ultimately found nonmeritorious.

APPENDIX

**REGIONAL DIRECTORS SUPPLEMENTAL
DECISION AND ORDER**

Pursuant to a Decision and Direction of Election issued on December 20, an election by secret ballot was conducted on January 25, 1991, in a unit of all full-time and regular part-time employees engaged in the pick up and processing of recyclable materials, including truck drivers, mechanics, and plant processing employees, employed at the Employer's facility located at 1140 Cambell Avenue, San Jose, California; excluding all office clerical employees, guards, and supervisors as defined in the Act. Due to the pendency of the unfair labor practice charge in related Case 32-CA-11622, the ballots were impounded at the conclusion of the election.

Following an investigation of the aforementioned unfair labor practice charge, the undersigned issued complaint, alleging, inter alia, that the Employer had violated Section 8(a)(1) of the Act by engaging in conduct designed to interfere with the freedom of employees to fairly choose their bargaining representative. Following a hearing on July 12, 1991, the administrative law judge issued a decision on December 27, 1992, in which he found that the Employer had violated Section 8(a)(1) of the Act. Thereafter, on July 28, 1992, the National Labor Relations Board (the Board) issued a Decision and Order,² wherein it adopted the Order of the administrative law judge. The Employer's conduct which was found by the Board to have violated Section 8(a)(1) of the Act occurred during the critical preelection period.

Accordingly, IT IS HEREBY ORDERED that the election be, and it hereby is, declared a nullity.

² 308 NLRB 50 (1992).